

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Long Term Care and Community Alternatives

4 (Amendment)

5 907 KAR 1:155. Payments for supports for community living services for an individual  
6 with mental retardation or a developmental disability.

7 RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a,  
8 b, d, n

9 STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3),  
10 205.6317[, ~~EO 2004-444~~]

11 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-444, effective May 11,~~  
12 ~~2004, reorganized the Cabinet for Health Services and placed the Department for Medi-~~  
13 ~~caid Services and the Medicaid Program under the Cabinet for Health and Family Ser-~~  
14 ~~vices.~~] The Cabinet for Health and Family Services, Department for Medicaid Services,  
15 is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet,  
16 by administrative regulation, to comply with any requirement that may be imposed, or  
17 opportunity presented, by federal law for the provision of medical assistance to Ken-  
18 tucky's indigent citizenry. This administrative regulation establishes the reimbursement  
19 provisions relating to home and community based waiver services provided to an indi-  
20 vidual with mental retardation or a developmental disability as an alternative to place-  
21 ment in an intermediate care facility for an individual with mental retardation or a

developmental disability.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "ICF/MR/DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(3) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a standardized tool used for the measurement of supportive services needed by an individual with a disability.

(4) ~~[(3)]~~ "Overall level of eligible support" means the highest of three (3) scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.

(5) ~~[(4)]~~ "Supports for community living services" or "SCL services" means community-based waiver services for an individual with mental retardation or a developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service ~~[, as provided in subsection (2) of this section,]~~ provided to a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with mental retardation or a developmental disability as established in 907 KAR 1:022; and

(b) Is authorized for an SCL service by the department.

(2) In order to be covered, a service shall be described, defined, and provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3. SCL Reimbursement. ~~[Specialized medical equipment and supplies shall:]~~

(1) Specialized medical equipment and supplies shall:

(a) Not be available through the Medicaid Durable Medical Equipment, Vision, Hearing, or Dental Programs pursuant to 907 KAR 1:479, 907 KAR 1:038, and 907 KAR 1:026;

(b) Be ordered by a physician;

(c) Be specified in the individual support plan as identified in 907 KAR 1:145;

(d) Be a unit of service in which one (1) unit equals one (1) item as provided in Section 4 of this administrative regulation;

(e) Be submitted on form MAP-95;

(f) Be reimbursed:

1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and

2. Based on the submission of three (3) price estimates of which the lowest will determine the amount of reimbursement; and

(g) Not include furniture, a recreational item, or a leisure item.

(2) A functional analysis to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.

(3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.

(4) Monitoring a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of service:

Service	Unit of Service	Upper Payment Limit
<u>Adult day training on-site</u>	<u>15 minutes</u>	<u>\$2.50</u>
<u>Adult day training off-site</u>	<u>15 minutes</u>	<u>\$3.00</u>
Adult foster care	24 hours	<u>\$112.49</u> [ <del>64.28</del> ]
<u>Assessment/reassessment</u>	<u>One assess- ment or reas- sessment</u>	<u>\$75.00</u>
Behavior support	15 minutes	\$33.25
<u>Case management</u>	<u>1 month</u>	<u>\$376.06</u>
<u>Children's day habilitation</u> [ <del>Community habilitation</del> ]	15 minutes	<u>\$2.50</u> [ <del>\$2.66</del> ]
Community living	15 minutes	\$5.54
Family home <u>provider</u>	24 hours	<u>\$112.49</u> [ <del>64.28</del> ]
Group home	24 hours	<u>\$126.35</u> [ <del>\$66.50</del> ]
Occupational therapy by <u>occupational therapist</u>	15 minutes	\$22.17
<u>Occupational therapy by certified occupational ther- apy assistant</u>	<u>15 minutes</u>	<u>\$13.97</u>
Physical therapy by <u>physical therapist</u>	15 minutes	\$22.17
<u>Physical therapy by physical</u>	<u>15 minutes</u>	<u>\$13.97</u>

<u>therapy assistant</u>		
<del>[Prevocational services]</del>	<del>[15 minutes]</del>	<del>[\$5.54]-</del>
Psychological services	15 minutes	\$38.79
Respite	15 minutes	\$2.77
Specialized medical equipment and supplies	1 item	Based on submission of 3 price estimates and reimbursed as described in Section 3 of this administrative regulation.
Speech therapy	15 minutes	\$22.17
Staffed residence	24 hours	\$168.46
<del>[Support coordination]</del>	<del>[1 month]</del>	<del>[\$382.31]</del>
Supported employment	15 minutes	\$5.54

(1) Adult day training on-site and off-site shall be limited to:

(a) Forty (40) hours (160 units) per week; and

(b) 255 days per calendar year with the specific days established in the individual support plan and approved by the department.

(2) Children's day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Non-Level II Intensity Payment. (1) In addition to the rates specified in Section 4 of this administrative regulation, a provider may receive an intensity payment.

(2) A non-Level II ~~[An]~~ intensity payment for a unit of service shall be:

(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;

(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and

(c) For the following SCL services:

1. Staffed residence;

2. Community living;

3. Respite;

4. Family home provider;

5. Group home;

6. Adult foster care home; ~~[or]~~

7. Adult day training on site;

8. Adult day training off site; or

9. Children's day habilitation ~~[Community habilitation]~~.

(3) A non-Level II ~~[An]~~ intensity payment for a unit of service shall be as follows:

Service	Intensity Payment
<u>Adult day training on site</u>	<u>\$0.40</u>
<u>Adult day training off site</u>	<u>\$0.40</u>
<u>Children's day habilitation</u>	<u>\$0.40</u>
Staffed residence	\$33.69
Community living supports	\$0.83
Respite	\$0.42
Family home <u>provider</u>	<u>\$16.87</u> <del>[9.64]</del>
Group home	<u>\$25.27</u> <del>[\$9.97]</del>
Adult foster care	<u>\$16.87</u> <del>[9.64]</del>
<del>[Community habilitation]</del>	<del>[\$ 0.40]-</del>

1     Section 6. Level II Intensity Payment.

2     (1) The department shall reimburse an adult day health care center which qualifies  
3     for Level II reimbursement pursuant to 907 KAR 1:170 an intensity payment of \$0.50  
4     per unit for adult day training on-site or adult day training off-site provided to an SCL re-  
5     ipient.

6     (2) If an SCL recipient qualifies an adult day health care center for a non-Level II in-  
7     tensity payment and a Level II intensity payment, the department shall pay the Level II  
8     intensity payment.

9     Section 7. All-Inclusive Enhanced Rate.

10    (1) Effective September 1, 2006, the department shall reimburse an all-inclusive rate  
11    of \$125,000 per recipient per year to a group home, staffed residence, family home pro-  
12    vider, or adult foster care home for SCL services (in accordance with 907 KAR 1:145,  
13    Section 4) provided to an individual who has transitioned from an institutional setting to  
14    a community setting.

15    (2) The rate established in subsection (1) of this Section shall be paid for care to an  
16    individual who:

17    (a) Prior to the transition, expressed, or whose legal guardian expressed, a desire to  
18    transition from the facility in which he resided to a community placement; and

19    (b)1. Prior to the transition, resided in an ICF/MR/DD the entire two (2) year period  
20    (with the period ending no earlier than July 1, 2006) immediately preceding transitioning  
21    out of the ICF/MR/DD and who was approved by the department for transitioning;

22    2. Resided in an ICF/MR/DD for a period of less than two (2) years but more than six  
23    (6) months (with the period ending no earlier than July 1, 2006) immediately preceding

transitioning out of the ICF/MR/DD and who was approved for transitioning by the department; or

3.a. Transitioned from an institutional setting other than an ICF/MR/DD and:

b. Had a primary diagnosis of mental retardation or developmental disability;

c. Had resided in an ICF/MR/DD for a period of at least six (6) months within the preceding two (2) years;

d. Had received prior SCL funding; and

e. Had been reviewed and approved for transitioning by the department.

(3) To be considered for providing services to an individual meeting the criteria established in subsection (2) of this Section, a provider shall:

(a) Demonstrate its ability to ensure that the potential recipient will have access to each service identified in his or her individual support plan through:

1. The provider's own operation; or

2. An established network of providers that are:

a. Enrolled in the Medicaid program; or

b. Certified or licensed in accordance with state law governing their specific area of practice;

(b) Notify the department in writing:

1. Of the number of individuals it is willing and able to accept;

2. The date it will be able to accept an individual or individuals; and

3. That it is willing and able to provide services to a minimum of one (1) individual who has scored at least five (5) on the NC-SNAP; and

(c) Be able to serve a minimum of three (3) individuals, regardless of funding source,



1 in the residence. A provider is not required to serve a minimum of three (3) individuals  
2 referenced in subsection (2) of this Section, but rather shall be able to serve a minimum  
3 of three (3) individuals in the residence.

4 (4) To receive the rate established in subsection (1) of this Section, a provider shall  
5 submit documentation to the department of each SCL service provided to the recipient  
6 for whom the special rate is paid.

7 (5) The reimbursement established in subsection (1) of this Section:

8 (a) May expire if approval from the Centers for Medicare and Medicaid Services  
9 ceases and corresponding funding becomes unavailable; and

10 (b) Shall be all inclusive, meaning that it covers residential as well as all other SCL  
11 services (in accordance with 907 KAR 1:145, Section 4) provided to the recipient for a  
12 year.

13 (6) Recipient freedom of choice provisions shall apply during an individual's transition  
14 from an institution to a group home, staffed residence, family home provider or adult  
15 foster care home.

16 (7) An individual may transition to a group home, staffed residence, family home pro-  
17 vider, or adult foster care home if:

18 (a) The individual is eligible for SCL services pursuant to 907 KAR 1:145;

19 (b) The department determines that the group home, staffed residence, family home  
20 provider, or adult foster care home satisfies the requirements established in this Sec-  
21 tion; and

22 (c) The group home, staffed residence, family home provider, or adult foster care  
23 home meets the SCL provider requirements established in 907 KAR 1:145.

1     (8)(a) If a group home, staffed residence, family home provider, or adult foster care  
2     home declines to accept an individual referenced in subsection (2) of this Section, the  
3     provider, except as established in paragraph (b) of this subsection, shall be ineligible to  
4     provide services to any future individual who meets the criteria established in subsec-  
5     tion (2) of this Section and ineligible to receive the corresponding rate referenced in  
6     subsection (1) of this Section for care provided to any future individual.

7     (b) If the department determines that a provider who declines to accept an individual  
8     is not equipped to serve the individual and that the placement would be inappropriate,  
9     the provider may be considered for future placements.

10    (c) Refusing to accept an individual referenced in subsection (2) of this Section, shall  
11    not preclude a provider from continuing to:

12    1. Serve an individual meeting the criteria established in subsection (2) of this Sec-  
13    tion who is already residing in the provider's residence; or

14    2. Be reimbursed at the rate established in subsection (1) of this Section for services  
15    provided to an individual already residing in the provider's residence.

16    Section 7. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A re-  
17    cipient of an SCL waiver service shall have an NC-SNAP administered:

18    (a) By the department [~~or its designee~~]; and

19    (b) In accordance with the NC-SNAP Instructor's Manual.

20    (2) A new NC-SNAP may be administered:

21    (a) At the department's discretion; or

22    (b) At the timely request of an SCL provider if a change in a recipient's circumstances  
23    results in the need for increased or decreased supportive services.

(3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:

(a) In accordance with subsection (2)(b) of this section; or

(b) As a result of an appeal filed in accordance with Section 9[8](1) of this administrative regulation.

Section 8 [7]. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3 (10).

Section 9 [8]. Appeal Rights. (1) An appeal of an NC-SNAP score in accordance with 907 KAR 1:671 shall not be allowed if the change in score does not affect the provider's reimbursement level.

(2) An appeal of a department decision regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding the eligibility of an individual shall be in accordance with 907 KAR 1:560.

(4) A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 10 [9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-95 Request for Equipment Form" Department for Medicaid Services, "September 2002 Edition";

(b) "North Carolina Support Needs Assessment Profile (NC-SNAP)", "2000 Edition", copyright Murdoch Center Foundation; and

1 (c) "NC-SNAP Instructor's Manual", copyright 1999, Murdoch Center Foundation.

2 (2) This material may be inspected, copied, or obtained, subject to applicable copy-  
3 right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,  
4 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 1:155

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Glenn Jennings, Commissioner  
Department for Medicaid Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mike Burnside, Undersecretary  
Administrative and Fiscal Affairs

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark D. Birdwhistell, Secretary  
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on October 23, 2006, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:155  
Cabinet for Health and Family Services  
Department for Medicaid Services  
Agency Contact Person: Stuart Owen 502-564-6204

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for supports for community living (SCL) services.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for SCL services.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement methodology for SCL services.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the reimbursement methodology for SCL services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: The new amendment adds an enhanced all-inclusive reimbursement rate of \$125,000 per year for care to an individual deinstitutionalized from an intermediate care facility for individuals with mental retardation or a developmental disability (ICF/MR/DD). The reimbursement covers all services, residential as well as all other SCL services. Additionally, a new amendment adds an intensity payment for adult day training (on site and off site) provided by an adult day health care center which qualifies for Level II reimbursement pursuant to 907 KAR 1:170.
  - (b) The necessity of the amendment to this administrative regulation: The new amendment is necessary to promote adequate residential options for individuals displaced from an ICF/MR/DD.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by promoting adequate residential options for individuals displaced from an ICF/MR/DD.
  - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by promoting adequate residential options for individuals displaced from an ICF/MR/DD.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Group homes, staffed residences, family home providers, and adult foster care homes as well as individuals (and their family members) currently in an ICF/MR/DD may be affected by the new amendment to this administrative regulation.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Group homes, staffed residences, family home providers, and adult foster care homes that wish to participate must express willingness to participate and must demonstrate that they can ensure that an individual (who is being deinstitutionalized) has access to each service identified in the recipient's individual support plan through the provider's own operation or via an established network of providers that are enrolled in the Medicaid program or certified or licensed in accordance with state law governing their specific area of practice. Additionally, adult day health care centers which qualify for Level II reimbursement pursuant to 907 KAR 1:170 shall receive an intensity payment for adult day training provided to SCL recipients.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The new amendment offers an enhanced reimbursement rate but is contingent on group homes, staffed residences, family home providers, and adult foster care homes volunteering to care for an individual or individuals who have been deinstitutionalized from an ICF/MR/DD. Group homes, staffed residences, family home providers, and adult foster care homes that do not wish to participate are not required to do so. Additionally, adult day health care centers which qualify for Level II reimbursement pursuant to 907 KAR 1:170 shall receive an intensity payment for adult day training provided to SCL recipients.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Group homes, staffed residences, family home providers, and adult foster care homes that voluntarily participate will receive an enhanced reimbursement rate of \$125,000 per recipient per year. Additionally, adult day health care centers which qualify for Level II reimbursement pursuant to 907 KAR 1:170 shall receive an intensity payment for adult day training provided to SCL recipients.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: The Department for Medicaid Services (DMS) estimates that the new amendment will result in no added cost nor savings as funds previously used to cover individuals in an institutional setting shall be used to cover care provided for individuals in the community.
  - (b) On a continuing basis: DMS estimates that the new amendment will result in no added cost nor savings as funds previously used to cover individuals in an



institutional setting shall be used to cover care provided for individuals in the community.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations, and revenues from the Medical Assistance Revolving Trust Fund (MART) are utilized to fund the this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding is necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish or directly or indirectly increase any fee.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)  
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:155

Contact Person: Stuart Owen  
(564-6204)

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

Yes   X   No       

If yes, complete 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Group homes, staffed residences, family home providers, and adult foster care homes as well as individuals (and their family members) currently in an ICF/MR/DD may be affected by the new amendment to this administrative regulation.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.6317 requires the Department for Medicaid Services to develop and implement flexible reimbursement and payment strategies that reflect the individually determined needs for services and supports by persons with mental retardation and other developmental disabilities participating in the Supports for Community Living Waiver Program. Section 1915(c) of the Social Security Act provides the Secretary of the U.S. Department for Health and Human Resources with the authority to waive Medicaid provisions in order to allow long-term care services to be delivered in community settings. Waiver programs such as the Supports for Community Living program established in this administrative regulation are Medicaid's alternative to providing comprehensive long-term services in institutional settings.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation. However, group homes, staffed residences, family home providers, and adult foster care homes that serve eligible SCL recipients will receive an enhanced reimbursement rate of \$125,000 per recipient per year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)

for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation. However, group homes, staffed residences, family home providers, and adult foster care homes that serve eligible SCL recipients will receive an enhanced reimbursement rate of \$125,000 per recipient per year.

- (c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that the new amendment will result in no added costs during the first year of program administration as funds previously used to cover individuals in an institutional setting will be used to cover care provided for individuals in the community.
- (d) How much will it cost to administer this program for subsequent years? The DMS estimates that the new amendment will result in no added costs during subsequent years of program administration as funds previously used to cover individuals in an institutional setting will be used to cover care provided for individuals in the community.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \_\_\_\_\_

Expenditures (+/-): \_\_\_\_\_

Other Explanation: No additional expenditures are necessary to implement this amendment.